

**Internal Revenue Service**

Number: **202344012**

Release Date: 11/3/2023

Index Number: 9100.00-00, 1400Z.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-104198-23

Date:

August 08, 2023

Re:

Taxpayer =

State =

Firm =

Advisor = 1

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Year 3 =

Dear \_\_\_\_\_ :

This responds to Taxpayer's request dated Date 1, seeking relief to make a late regulatory election pursuant to §§ 301.9100-1 and 301.9100-3.<sup>2</sup> Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify Taxpayer as a Qualified Opportunity Fund (QOF) as defined in § 1400Z-2(d) of the Code; and (2) be treated as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2 and § 1.1400Z2(d)-1(a).

### FACTS

The information and affidavits submitted reflect the following:

Taxpayer was organized as a limited liability company on Date 2 under the laws of State and is treated as a partnership for federal income tax purposes. Taxpayer uses the cash method of accounting and reports income on a calendar year basis.

As set forth in its operating agreement, Taxpayer's purpose is to be a QOF and invest and hold at least ninety percent of its assets in qualified opportunity zone property as such term is defined in § 1400Z-2(d)(2). The operating agreement also provides that Taxpayer shall cause the Form 8996 to be prepared and filed.

Taxpayer retained Firm to provide tax consulting and compliance services, including preparing and filing Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*. Firm is a licensed certified public accounting firm which provides various tax consulting services, including tax compliance. Taxpayer believes that Firm was aware of the relevant facts relating to the Form 8996 and that Firm understood the Form 8996 must be included with Taxpayer's Year 1 federal income tax return to self-certify as a QOF.

Taxpayer's Year 1 Form 1065 was extended until September 15, Year 2, and Firm timely filed the Year 1 federal income tax return electronically on Date 3. Firm, however, did not include the Form 8996 with the Year 1 federal income tax return. On Date 4, Firm electronically filed Taxpayer's Year 2 federal income tax return, which included a Form 8996.

Taxpayer engaged Advisor to prepare its Year 3 federal income tax return and to provide tax consulting services related to its status as a QOF. Thereafter, Advisor informed Taxpayer that Form 8996 was not included with Taxpayer's Year 1 federal

---

<sup>2</sup> Unless otherwise specified, all "section" references are to sections of the Internal Revenue Code, 26 U.S.C. (Code), or the income Tax Regulations or Procedure and Administration Regulations, 26 C.F.R. pt. 1 or 26 C.F.R. pt. 301.

income tax return. Firm has since indicated that, when preparing Taxpayer's Year 1 federal income tax return, it inadvertently indicated on the tax return that Taxpayer was not attaching Form 8996 to certify as a QOF.

Notwithstanding the inadvertent failure to file Form 8996 for Year 1, Taxpayer has filed its federal income tax returns as if the intended election to be a QOF had been made and has provided information to its investors indicating it is a QOF. Taxpayer's Year 1 federal income tax return is not under examination by the Service.

### LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act of 2017, provides for the deferral of inclusion in gross income of eligible capital gain reinvested in a QOF and the exclusion of capital gain from the sale or exchange of an investment in the QOF. Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2)(i) provides that the self-certification of a QOF must be timely-filed and effectuated annually in such form and manner as may be prescribed by the Commissioner of Internal Revenue (Commissioner) in the forms or instructions, or in publications or guidance of the Internal Revenue Service (Service) published in the Internal Revenue Bulletin.

To self-certify as a QOF, a taxpayer must file Form 8996 with its tax return for the year to which the certification applies. The Form 8996 must be filed by the due date of the tax return (including extensions).

Inasmuch as § 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in § 301.9100-1(b).

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;

(ii) failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the written advice of the Service; or

(v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

(i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;

(ii) was fully informed in all material respects of the required election and related tax consequences but chose not to make the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

Section 30.9100-3(c)(1) provides—

(i) the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

(ii) the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by

the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would

not prejudice the interests of the Government. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to the Taxpayer's amended Year 1 tax return or administrative-adjustment request (as applicable).

This ruling is based upon the representations made and information submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. As part of an examination process, the Service may verify the information, representations and other data submitted.

This ruling addresses the granting of relief under § 301.9100-3 as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. In addition, we express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Stephen J. Toomey  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: